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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re

DAVID PHILLIP RODRIGUEZ,

On Habeas Corpus.

F072223

(Kings Super Ct. No. 12CM7070)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

David Phillip Rodriguez, in pro. per., for Petitioner.

No appearance for Respondent.

-ooOoo-

Petitioner seeks a belated appeal by way of a petition for writ of habeas corpus challenging his conviction in Kings County Superior Court action No. 12CM7070. This court will grant his request.

On July 30, 2012, petitioner was sentenced after a jury trial to “14 years 8 months” for “two counts of assault with a deadly weapon, battery on a non-confined person, resisting an executive officer, attempted battery upon a non-confined person.”

* Before Gomes, A.P.J., Franson, J., and Peña, J.

Attached to the petition is a declaration from trial counsel which declares under penalty of perjury that petitioner asked him at sentencing to file an appeal and that counsel failed to do so.

This court sent an order to the Attorney General allowing her to file an informal response and noting that the failure to file a response will be deemed agreement that petitioner be granted a belated appeal.

The Attorney General did not file an informal response. Pursuant to this court's order, this court deems that failure to respond to constitute an agreement that petitioner be granted a belated appeal.

A criminal defendant has the burden of timely filing a notice of appeal, but that burden may be delegated to counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) When applicable, the doctrine of constructive filing allows an untimely filed notice of appeal to be deemed timely if the defendant relied upon the promise of trial counsel to timely file the notice on the defendant's behalf. (*In re Benoit* (1973) 10 Cal.3d 72.) The doctrine protects defendants who have been "lulled into a false sense of security" by counsel's promise. (*Id.* at p. 87.)

DISPOSITION

The Clerk/Administrator of this court is authorized to send a copy of the "NOTICE OF APPEAL – FELONY (DEFENDANT)," dated August 15, 2015, which is attached to the petition, to the Clerk of the Kings County Superior Court.

Let a writ of habeas corpus issue directing the Clerk of the Kings County Superior Court to file said notice of appeal in Kings County Superior Court action No. 12CM7070, to treat said notice as being timely filed, and to proceed with the preparation of the appropriate record on appeal in accordance with the applicable rules of the California Rules of Court.